REMARKS

The foregoing claim amendments and following comments are responsive to the Office Action mailed June 19, 2009. Reconsideration of the claim rejections in light of these amendments and comments is requested.

A petition and fee for a two month extension of time are being filed concurrently herewith. A Request for Continued Prosecution (RCE), with the corresponding fee, are also being filed concurrently herewith.

Still further, Applicant is submitting a supplemental information disclosure statement herewith. The supplemental disclosure statement identifies a pair of patent references that were cited by the European patent office in a pending patent application that is the European counterpart to the present application. Still further, the supplemental IDS includes a copy of the latest Office Action from the European Patent Office, as well as a copy of the current claims of the European application. Applicant requests that the Examiner review these documents, initial and date the accompanying PTO form, and return it to the Applicant with the next PTO communication.

Claims Rejections

Claims 1 and 6-31 were pending in this application prior to the present response. By way of the amendments made herein, claims 9, 10, 20, 25, 26, and 29 have been cancelled. The subject matter of claims 9, 10, and 20 have been incorporated into claim 1, with a corresponding amendment being made to method claim 28. Claims 11 and 14-19 have been amended to change their dependency from the cancelled claims.

Amended claim 1 now recites that the device comprise a mesh mounted to a shaft and that the expanding means comprises a collar slidably mounted about the shaft, and at least one arm mounted between the collar and the mesh, such that displacement of the collar towards the mesh effects expansion of the mesh. The device further comprises an abutment (disc 50) against which the expanded mesh is seated in order to secure the mesh in place once the surgical incision has been closed, which abutment comprises a recess within which a cut end of the shaft may be seated in order to cover same and distribute the pressure exerted by the cut end of the shaft.

In the Office Action the Examiner rejects claim 9 and 10 as being anticipated by Konya et al. The Examiner states on page 3 of the Office action that the device of Konya comprises a mesh having a mesh perimeter and a shaft mounting area and that the expanding means is slidably mounted about the shaft. The Examiner further states that original claim 10 is

anticipated as the device of Konya includes a collar (32) slidably mounted about the shaft, and a plurality of arms mounted between the collar and an arm mounting position of the mesh. Turning to page 4 of the Office Action, the Examiner is again of the opinion that original claim 20 is anticipated by the device of Konya, as the Examiner is of the opinion that the collar 14 may be regarded as an abutment against which the mesh is seated. However, the collar 14 does not have, as required by currently amended claim 1 of the present application, "a recess within which a cut end of the shaft may be seated, such that the abutment covers the cut end of the shaft and distributes the pressure exerted by the cut end of the shaft". The collar 14 has a through bore extending from one side to the other, as opposed to a recess and will not therefore cover the cut end of the shaft and distribute the pressure exerted by same. Rather the collar 14 allows the shaft to pass completely there through, and does not therefore secure the mesh in place. It is thus submitted that amended claim 1 is novel over Konya et al.

Turning then to US 2003 073979 (Naimark et al), this document again discloses a surgical device having a surgical implant in the form of a mesh which is displaceable between collapsed and expanded states, and further includes an expanding device in the form of a collar slidable on a shaft to which the mesh is mounted, in order to effect expansion of the mesh. However, Naimark et al does not disclose the provision of an abutment in order to secure the surgical device in position, and to distribute pressure exerted by the surgical device once the surgical incision has been closed. Rather Naimark et al provides the mesh with one surface having an adhesive material in order to allow the mesh to be adhered in position at the surgical site. It is therefore respectfully submitted that amended claim 1 is novel over Naimark et al.

Turning then to obviousness, neither Konya et al nor Naimark et al suggest or imply the use of an abutment to both secure the mesh in position and distribute the pressure exerted by the surgical device once the surgical incision has been closed around the device. Indeed this is not an issue that is relevant to the intended uses of the respective devices of Konya et al and Naimark et al. The device of Konya et al is primarily intended as an occlusion apparatus, for occluding the likes of blood vessels and other tubular structures in the body – see column 1, lines 5-10. As a result this device, once in situ, will not experience significant pressures working to dislodge the device, and as the guide wire 38 utilized to locate the device in position is removed once the device has been deployed, Konya et al does not deal with the problem of discomfort caused by such a shaft pressing against, for example the abdominal wall, once the device is in position. As a result Konya et al does not teach towards the solution provided by the present invention,

namely the provision of the abutment for receiving and covering the cut end of the shaft, in order to distribute the pressure exerted thereby. The device of the present invention is designed for insertion into a surgical cavity from the inguinal region under local anaesthesia and secured in position by the abutment. The device is designed to allow intra-abdominal hernia repair without the use of potentially toxic adhesives, or potentially dangerous staples or similar anchors, and thus without requiring dissection and ensuing complications. The device, when in situ, retains the collar and plurality of arms forming the expanding means, thus providing vital reinforcement to the device once in situ, in order to reinforce the hernia repair. As the device of Konya et al does not retain such rigid components within the device once in situ, it does not deal with the problem of the possible discomfort caused by such rigid elements pressing against the patient's abdomen. As a result Konya et al does not teach towards the solution provided by the present invention. It is therefore respectfully submitted that amended claim 1 is not obvious over Konya et al.

Similarly, the device and method disclosed in Naimark et al does not teach towards the solution provided by the present invention. The device of Naimark et al utilizes an adhesive surface on the patch in order to secure same in position, and thus does not deal with the problems associated with a shaft of the device exerting pressure on the body of the patient. In addition the device of Naimark et al is concerned with delivering a therapeutic patch to the heart or surrounding tissue as a drug delivery vehicle. The document does not deal with the issues of hernia repair, and the pressures experienced by devices used in such a procedure, and thus a person skilled in the art seeking a solution to this problem would not consult this document. Even if the document were consulted, it does not teach towards the solution provided by the present invention, as Naimark teaches the use of an adhesive to secure the mesh in position as opposed to an abutment to be placed between the device and the abdominal wall, in order that the mesh and shaft of the device may bear against the abutment in order to retain the device in position. It is therefore respectfully submitted that amended claim 1 is not obvious in light of the disclosure of Naimark et al.

Claim 1 should therefore be allowable over the art. The remaining claims, all being dependent upon claim 1, are therefore also allowable for at least the reason of their being dependent upon an allowable base claim.

If the Examiner has any questions about anything discussed herein, he is invited to contact the undersigned.

Respectfully submitted,

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